expressed itself in attacks on the court, the jury, the district attorney, and the criminal law in general.

It is impossible within the limits of this note to review the evidence even briefly; but of those who intelligently followed the course of the trial, few doubted the justice of the verdict. The jury in arriving at their decision performed a courageous act, and it is to be deplored that the conduct of certain of its members since their dismissal has not been equally deserving of commendation. Perhaps a suggestion as to the probable cause of the popular clamor will not be out of place. The public mind does not work logically. The element of seeming unreliability in the testimony of the government's chief witness, Charles Brown, furnished perhaps a reason for doubting the defendant's guilt as established by that particular evidence. It afforded no good grounds, however, for entirely neglecting the circumstantial evidence which in the opinion of the majority of trained lawyers was amply sufficient to support the verdict. And yet this was the unconscious line of reasoning taken by the majority of those who denounced the finding of the jury. It indicates what is the root of the difficulty. People generally refuse to realize that proof beyond a reasonable doubt is precisely the same thing, whether the result is to be a fine, imprisonment, or death. Yet the fact is fairly obvious. The degree of punishment of a crime does not affect the logically probative force of the evidence, and a defendant is not innocent because his life is at stake. But the public thinks to compensate for its fallacious reasoning on the ground that it errs on the side of mercy. This is not so. The pitiable situation of a defendant on trial for a capital crime is not to be denied; but on the score of mercy, the stifling sensation which unpunished murder raises in the minds of perfectly innocent members of the community, especially in the weak and helpless, is entitled to greater consideration. As has often been pointed out, exaggerated sympathy with an accused is neither sensible nor kind; it is not well considered and does not rest on a sound foundation; it overlooks the fact that an important duty of the law is to punish the guilty.

THE CONSTITUTIONALITY OF MINORITY REPRESENTATION. — The advisability of the adoption of some scheme of minority representation is a constant theme of discussion among political reformers. The constitutional aspect of the question is often overlooked. That there may be grave doubts in some of our States whether a system providing for representation of the minority can be formulated, which will not conflict with the provisions of the State Constitution relative to the electoral franchise, is shown by the opinion recently written by Judge John F. Dillon,[1] to whom the question was referred by the committee for the preparation of a charter for Greater New York. The New York Constitution, Article II., Section I., provides that "every male citizen of the age of twenty-one years . . . shall be entitled to vote . . . in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people." This provision will of course be guarded by the courts with the utmost watchfulness. It was under the precisely similar section in the previous Constitution that the Court of Appeals, in *Matter of Gage*, 141 N. Y. 112, held that

[1] The opinion is printed in full in the Albany Law Journal for November 28, p. 346.

the act of 1892 conferring upon women the right to vote for school commissioners, was unconstitutional. Under substantially the same provision in the Ohio Constitution, the Supreme Court of that State, in *The State* v. *Constantine*, 42 Ohio St. 437, held that a statute providing for the election of four police commissioners and permitting each elector to vote for but two, was unconstitutional. Judge Dillon comes to the conclusion that an act providing for minority representation, in which the right of all electors to vote for every elective officer should be provided for, and which should give effect to the voice of the majority, would not violate the Constitution. This apparently points to some system of cumulative voting as the proper one to be adopted in order to avoid constitutional objections. Experiments in that direction, as Judge Dillon says, have occasionally been made. In England an act passed in 1870 provided that in the election of school boards "every voter shall be entitled to a number of votes equal to the number of members of the school board to be elected, and may give all such votes to one candidate, or distribute them among the candidates, as he sees fit." The similar provisions of the Illinois Constitution relative to the election of members of the House of Representatives, is one of the rare instances of the adoption in this country of a scheme of minority representation.

LIABILITY FOR RENT AFTER DESTRUCTION OF PREMISES. — Well known principles of the law of real property are extended to decidedly novel circumstances in the interesting recent case of *Waite* v. *O'Neil*, 76 Fed. Rep. 408. The plaintiff owned land bordering on the Mississippi River, at a place where a narrow strip of low land lay along the shore at the foot of a high bluff. She leased to the defendants "the river front and landing in front of the lot, with ample space for a roadway along the landing." By a sudden and extraordinary change in the course of the river, the strip of low land and a part of the bluff were swept away; so that the river now flows at the foot of a bank over sixty feet high, so undermined that no vessels could safely approach it, and quite incapable of being made into a safe landing place. More than this, a system of works has been erected in the river along this shore by persons acting with the authority of the lessor, to repair the damage done by the stream, which would entirely prevent any access to the bank. The lessor now insists, among other demands, on the payment of the stipulated rent. In considering this demand, the first question to be decided is as to the nature of the property leased. The court considers, having regard to the whole language of the lease and all the circumstances, that no portion of the land was leased, but only an incorporeal right appurtenant to the land, to have a "landing" on the river front, with a right of way to it. According to the well established though severe rule of law that no impairment of the value of property will release the lessee from his liability to pay the stipulated rent, the lessees in this case must pay full rent for the right leased to them, however little it is now worth; unless, indeed, they can show that this right, the subject matter of the lease, has been totally destroyed. In the latter case the liability for rent is necessarily extinguished, as is shown by the cases of a lease of a room in a building afterwards burnt down. *Graves* v. *Berdan*, 26 N. Y. 498.

Strictly speaking, if the lessees acquired all the lessor's rights as a riparian owner, such rights would appear to be still in existence, though